

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of J.A.M. Neal, Minor.

UNPUBLISHED

January 7, 2014

No. 314934

Clinton Circuit Court

Family Division

LC No. 12-023513-NA

Before: METER, P.J., and SERVITTO and RIORDAN, JJ.

PER CURIAM.

Respondent J.R. appeals as of right from the trial court's order terminating her parental rights to a minor child under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

We review for clear error a trial court's decision to terminate parental rights. *In re C R*, 250 Mich App 185, 194; 646 NW2d 506 (2002). Clear error exists where, although there may be evidence to support a finding, the reviewing court is left with a definite and firm conviction that a mistake has been made. See *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008).

The trial court terminated respondent's parental rights under MCL 712A.19(b)(3)(c)(i), (3)(g), and (3)(j). These subsections provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Respondent first argues that the concerns identified when the trial court assumed jurisdiction of the child had been rectified at time of termination. Specifically, respondent alleges that the issue of the child's safety due to improper supervision, domestic violence, and physical abuse did not exist at the time of termination.

However, in addition to the child's injuries, the trial court identified the child's malnourished condition and respondent's substance abuse, emotional instability, lack of parenting skills, inappropriate home conditions, and lack of income as concerns at adjudication. The evidence did not demonstrate that respondent successfully addressed these conditions. Respondent's therapist testified at the termination hearing that respondent was still exhibiting the same behaviors as when the therapist became involved in the case.

Some of respondent's difficulties were attributed to untreated attention deficit disorder (ADD). However, despite efforts to assist respondent to obtain a prescription, respondent failed to obtain an assessment for ADD medication and expressed some resistance to taking the medication. The therapist believed the medication could have assisted respondent's emotional stability.

Respondent did not successfully manage her substance-abuse problem. She was discharged from her substance-abuse treatment program due to noncompliance with the program. Respondent did not achieve stability with regard her living situation. She lost jobs due to absences and did not have reliable transportation. The home in which she was staying was not suitable for children.

Some of the testimony indicated that respondent did not have an emotional bond with the child. Respondent also did not attend parenting classes. Despite having limited parenting time with the child, respondent required direction or would lose interest in the child during parenting time and was not sure how to interact with her child.

Even though there were no reported instances of domestic violence since the child's removal from respondent's care, the evidence did not demonstrate that respondent had progressed to the point where she would not become involved in an abusive relationship. Respondent's therapist indicated that respondent had begun to acknowledge that she made poor relationship choices that possibly harmed her child, but the therapist remained concerned about domestic violence affecting the child.

The trial court did not err in finding clear and convincing evidence that “[t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.” MCL 712A.19(b)(3)(c)(i).

Respondent also argues that the concerns that she failed to provide proper care or custody for the child could have been corrected with reasonable efforts on the part of petitioner to reunite her with the child. Generally, petitioner is required to make “reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights.” *In re LE*, 278 Mich App at 18-19. Respondent argues that the services she was provided were inadequate.

The child was endangered by domestic violence and substance abuse that necessitated her removal from respondent’s care. Thereafter, respondent received or was offered various services, including in-home counseling, mental-health counseling, and substance-abuse counseling. Respondent failed to make progress with, was noncompliant with, or failed to take advantage of the services offered to her.

The record demonstrates that respondent did not use other services provided to assist her. Respondent did not attend offered parenting classes. Respondent did not look into low-income housing options that her caseworker provided. Respondent lost bus passes that were provided to her. Respondent’s caseworker testified that, except for counseling, respondent was not compliant with recommended services.

Respondent does not adequately argue that she achieved emotional stability; that she obtained basic needs such as housing, employment, and transportation; that her substance-abuse problem was well-managed; or that she could implement parenting skills. Respondent only argues that she was denied the opportunity to address these issues and suggests that she *might* be able to provide proper care and custody within a reasonable time. However, the record demonstrates that not only did respondent continue to struggle in these areas, but she did not comply with or benefit sufficiently from the many efforts to assist her. The trial court did not clearly err in finding that petitioner provided reasonable services to assist respondent and did not clearly err in finding that respondent “fail[ed] to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.” MCL 712A.19(b)(3)(g).

Respondent also argues that the evidence did not demonstrate that she would harm the child if the child were returned to her care. Respondent notes that there was no evidence that she physically harmed the child or that the child was physically harmed after respondent broke up with her abusive boyfriend. Of course, because the child was not in respondent’s care following the January 2012 incident of domestic violence during which the child was present, respondent’s conduct could not harm the child. However, the record demonstrates that the child had been harmed as a result of respondent’s involvement in domestic violence or for unexplained reasons while in respondent’s care. Additionally, testimony indicated that the child was severely underweight when she was removed from respondent’s care and might have been losing her toenails due to malnutrition.

Respondent argues that it was conjecture for the trial court to find that the child would likely be harmed if returned to her care. However, the above testimony indicated that respondent continued to struggle with substance abuse, emotional stability, the ability to provide basic needs, and parenting skills, even though respondent was provided with a number of services between August 2011 and February 2013. Because the conditions that produced an environment where the child was repeatedly harmed persisted, it was not clearly erroneous for the trial court to find “a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.” MCL 712A.19(b)(3)(j).

Affirmed.

/s/ Patrick M. Meter
/s/ Deborah A. Servitto
/s/ Michael J. Riordan